

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 206.00: STANDARD PAYMENTS TO NURSING FACILITIES

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206.01: Scope and Purpose

101 CMR 206.00 governs the payments effective October 1, 2016, for services rendered to publicly aided and industrial accident residents by nursing facilities including residents in a residential care unit of a nursing facility. 101 CMR 206.00 does not govern nursing facility payments pursuant to a contract with the Office of Medicaid.

206.02: General Definitions

As used in 101 CMR 206.00, unless the context requires otherwise, terms have the following meanings.

Actual Utilization Rate. The occupancy of a nursing facility calculated by dividing total patient days by maximum available bed days.

Additions. New units or enlargements of existing units that may or may not be accompanied by an increase in licensed bed capacity.

Administrative and General Costs. Administrative and general costs include the amounts reported in the following accounts: administrator salaries; payroll taxes - administrator; worker's compensation - administrator; group life/health - administrator; administrator pensions; other administrator benefits; clerical; EDP/payroll/bookkeeping services; administrator-in-training; office supplies; phone; conventions and meetings; help wanted advertisement; licenses and dues, resident-care related; education and training - administration; accounting - other; insurance - malpractice; other operating expenses; realty company variable costs; management company allocated variable costs; and management company allocated fixed costs.

Administrator-in-training. A person registered with the Board of Registration of Nursing Home Administrators and involved in a course of training as described in 245 CMR: *Board of Registration in Nursing Home Administrators*.

Audit. An examination of the provider's cost report and supporting documentation to evaluate the accuracy of the financial statements and identification of Medicaid patient-related costs.

Base Year. The calendar year used to compute the standard payments.

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Building Costs. Building costs include the direct cost of construction of the structure that houses residents and expenditures for service equipment and fixtures such as elevators, plumbing, and electrical fixtures made a permanent part of the structure. Building costs also include the cost of bringing the building to productive use, such as permits, engineering and architect's fees, and certain legal fees. Building costs include interest paid during construction to building costs but not mortgage acquisition costs.

Capital Costs. Capital costs include building depreciation, financing contribution, building insurance, real estate taxes, non-income portion of Massachusetts Corp. Excise Taxes, other rent, and other fixed costs.

Case-mix Category. One of six categories of resident acuity that represents a range of management minutes.

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

Change of Ownership. A *bona fide* transfer, for reasonable consideration, of all the powers and indicia of ownership. A change of ownership may not occur between related parties. A change of ownership must be a sale of assets of the provider rather than a method of financing. A change in the legal form of the provider does not constitute a change of ownership unless the other criteria are met.

Centers for Medicare and Medicaid Services (CMS). The federal agency under the U.S. Department of Health and Human Services that is responsible for administering the Medicare and Medicaid programs.

Constructed Bed Capacity. A nursing facility's "bed capacity (or clinical bed capacity)" as defined at 105 CMR 100.020: *Definitions*, which states: the capacity of a building to accommodate a bed and the necessary physical appurtenances in accordance with the applicable standards imposed as a condition of operation under state law. It includes rooms designed or able to accommodate a bed and necessary physical appurtenances, whether or not a bed and all such appurtenances are actually in place, with any necessary utilities (*e.g.*, drinking water, sprinkler lines, oxygen, electric current) with either outlets or capped lines within the room.

Department of Public Health (DPH). An agency of the Commonwealth of Massachusetts, established under M.G.L. c. 17, § 1.

Direct Restorative Therapy. Services of physical therapists, occupational therapists, and speech, hearing, and language therapists provided directly to individual residents to reduce physical or mental disability and to restore the resident to maximum functional level. Direct restorative therapy services are provided only upon written order of a physician, physician assistant, or nurse practitioner who has indicated anticipated goals and frequency of treatment to the individual resident. Direct restorative therapy services include supervisory, administrative, and consulting time associated with provision of the services. These include, but are not limited to, reviewing preadmission referrals, informally communicating with families, scheduling treatments, completing resident care documentation including MDS documentation, screening of patients, writing orders,

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meeting with aides to discuss patients, consulting with physicians and nurse practitioners, managing equipment, and assessing equipment needs of patients.

Executive Office of Health and Human Services (EOHHS). The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that, through the Department of Elder Affairs and other agencies within EOHHS, as appropriate, operates and administers the programs of medical assistance and medical benefits under M.G.L. c. 118E and that serves as the single state agency under section 1902(a)(5) of the Social Security Act.

Equipment. A fixed asset, usually moveable, accessory or supplemental to the building, including such items as beds, tables, and wheelchairs.

Financing Contribution. Payment for the use of necessary capital assets whether internally or externally funded.

Generally Available Employee Benefits. Employee benefits that are nondiscriminatory and available to all full-time employees.

Hospital-based Nursing Facility. A separate nursing facility unit or units located in a hospital building licensed for both hospital and nursing facility services in which the nursing facility licensed beds are less than a majority of the facility's total licensed beds and the nursing facility patient days are less than a majority of the facility's total patient days. It does not include freestanding nursing facilities owned by hospitals.

Improvements. Expenditures that increase the quality of the building by rearranging the building layout or substituting improved components for old components so that the provider is in some way better than it was before the renovation. Improvements do not add to or expand the square footage of the building. An improvement is measured by the provider's increased productivity, greater capacity, or longer life.

Indirect Restorative Therapy. Indirect restorative therapy services consist only of services of physical therapists, occupational therapists, and speech, hearing, and language therapists to provide the following: orientation programs for aides and assistants; in-service training to staff; consultation and planning for continuing care after discharge; preadmission meetings with families; quality improvement activities such as record reviews, analysis of information and writing reports; personnel activities including hiring, firing, and interviewing; rehabilitation staff scheduling; and attending team meetings including quality improvement, falls, skin team, daily admissions, interdisciplinary, departmental staff, discharge planning, and family meetings when resident is not present.

Industrial Accident Resident. A person receiving nursing facility services for which an employer or an insurer is liable under the workers' compensation act, M.G.L. c. 152.

Land Costs. Land costs include the purchase price plus the cost of bringing land to a productive use including, but not limited to, commissions to agents, attorneys' fees, demolition of buildings, clearing and grading the land, constructing access roads, off-site sewer and water lines, and public

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utility charges necessary to service the land; and land Improvements completed before the purchase. The land must be necessary for the care of publicly aided residents.

Licensed Bed Capacity. The number of beds for which the nursing facility is either licensed by the Department of Public Health pursuant to 105 CMR 100.020: *Definitions*, or for a nursing facility operated by a government agency, the number of beds approved by the Department. The Department issues a license for a particular level of care.

Major Addition. A newly constructed addition to a nursing facility that increases the licensed bed capacity of the facility by 50% or more.

Management Minutes. A method of measuring resident care intensity, or case mix, by discrete care-giving activities or the characteristics of residents found to require a given amount of care.

Management Minutes Questionnaire. A form used to collect resident care information including but not limited to case-mix information as defined by the MassHealth agency.

Massachusetts Corporate Excise Tax. Those taxes that have been paid to the Massachusetts Department of Revenue in connection with the filing of Form 355A, Massachusetts Corporate Excise Tax Return.

Maximum Available Bed Days. The total number of licensed beds for the calendar year, determined by multiplying the mean licensed bed capacity for the calendar year by the days in the calendar year.

Mean Licensed Bed Capacity. A provider's weighted average licensed bed capacity for the calendar year, determined by multiplying maximum available bed days for each level of care by the number of days in the calendar year for which the nursing facility was licensed for each level and adding the maximum available bed days for each level and dividing the total maximum available bed days by the number of days in the calendar year.

Mortgage Acquisition Costs. Those costs (such as finder's fees, certain legal fees, and filing fees) necessary to obtain long-term financing through a mortgage, bond, or other long-term debt instrument.

New Facility. A facility that opens after October 1, 2016. A replacement facility is not a new facility.

Nursing Costs. Nursing costs include the reported costs for director of nurses, registered nurses, licensed practical nurses, nursing aides, nursing assistants, orderlies, nursing purchased services, and the workers compensation expense, payroll tax expense, and fringe benefits, including pension expense, associated with those salaries.

Nursing Facility. A nursing or convalescent home; an infirmary maintained in a town; a charitable home for the aged, as defined in M.G.L. c. 111, § 71; or a nursing facility operating under a hospital license issued by the Department pursuant to M.G.L. c. 111, and certified by the Department for

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participation in MassHealth. It includes facilities that operate a licensed residential care unit within the nursing facility.

Other Fixed Costs. Other fixed costs include real estate taxes, personal property taxes on the nursing facility equipment, the non-income portion of the Massachusetts corporate excise tax, building insurance, and rental of equipment located at the facility.

Other Operating Costs. Other operating costs include, but are not limited to the following reported costs: plant, operations and maintenance; dietary; laundry; housekeeping; ward clerks and medical records librarian; medical director; advisory physician; Utilization Review Committee; employee physical exams; other physician services; house medical supplies not resold; pharmacy consultant; social service worker; indirect restorative and recreation therapy expense; other required education; job related education; quality assurance professionals; Management Minute Questionnaire nurses; staff development coordinator; motor vehicle expenses including, but not limited to depreciation, mileage payments, repairs, insurance, excise taxes, finance charges, and sales tax; and administrative and general costs.

Patient Days. The total number of days of occupancy by residents in the facility. The day of admission is included in the computation of patient days; the day of discharge is not included. If admission and discharge occur on the same day, one resident day is included in the computation. It includes days for which a provider reserves a vacant bed for a publicly aided resident temporarily placed in a different care situation, pursuant to an agreement between the provider and the MassHealth agency. It also includes days for which a bed is held vacant and reserved for a non-publicly aided resident.

Private Nursing Facility. A nursing facility that formerly served only non-Medicaid residents and does not have a provider agreement with the MassHealth agency to provide services to public residents.

Provider. A nursing facility providing care to publicly aided residents or industrial accident residents.

Prudent Buyer Concept. The assumption that a purchase price that exceeds the market price for a supply or service is an unreasonable cost.

Publicly Aided Resident. A person for whom care in a nursing facility is in whole or in part subsidized by the Commonwealth or a political subdivision of the Commonwealth. Publicly aided residents do not include residents whose care is in whole or in part subsidized by Medicare.

Related Party. An individual or organization associated or affiliated with, or that has control of, or is controlled by, the provider; or is related to the provider, or any director, stockholder, trustee, partner, or administrator of the provider by common ownership or control or in a manner specified in §§ 267(b) and (c) of the Internal Revenue Code of 1954 provided, however, that 10% is the operative factor as set out in §§ 267(b)(2) and (3). Related individuals include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law.

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Replacement Facility. A nursing facility that replaces its entire building with a newly constructed facility pursuant to an approved determination of need under 105 CMR 100.505: *Applications Eligible for Delegated Review and Action*(A)(5). A facility that renovates a building previously licensed as a nursing facility is not a replacement facility.

Reported Costs. All costs reported in the cost report, less costs adjusted and/or self-disallowed in the HCF-1.

Required Education. Educational activities, conducted by a recognized school or authorized organization, required to maintain a professional license of employees that provide care to publicly aided residents. Required education also includes training for nurses' aides.

Residential Care. The minimum basic care and services and protective supervision required by the Department in accordance with 105 CMR 150.000: *Licensing of Long-term Care Facilities* for residents who do not routinely require nursing or other medically related services.

Residential Care Unit. A Unit within a nursing facility licensed by the Department to provide residential care.

State Fiscal Year (SFY). The 12-month period from July 1st through June 30th.

Unit. A unit is an identifiable section of a nursing facility such as a wing, floor, or ward as defined in 105 CMR 150.000: *Licensing of Long-term Care Facilities*.

206.03: General Payment Provisions

(1) General. Nursing facility payments are prospective rates based on reported costs for a prior base year. The base year for the standard payments effective October 1, 2016, is 2007. Nursing facility payments include the nursing standard payments and other operating cost standard payment established in 101 CMR 206.04 and the capital payment established in 101 CMR 206.05. Payments may be adjusted to include additional payments in accordance with 101 CMR 206.06.

(2) Ancillary Costs. Unless a provider participates in the Ancillary Pilot Program with the MassHealth agency, or a provider's payments include ancillary services pursuant to the regulations or written policy of the purchasing agency, the provider must bill ancillary services directly to the purchaser in accordance with the purchaser's regulations or policies.

(3) Disclaimer of Authorization of Services. 101 CMR 206.00 is not authorization for or approval of the substantive services, or lengths of time, for which rates are determined pursuant to 101 CMR 206.00. Governmental units that purchase services from eligible providers are responsible for the definition, authorization, and approval of services and lengths of time provided to publicly aided individuals. Information concerning substantive program requirements must be obtained from purchasing governmental units.

206.04: Nursing and Other Operating Costs

(1) Nursing facilities are paid the following nursing standard payments.

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Payment Group	Management Minute Range	Standard Payment
H	0 - 30	\$14.45
JK	30.1 – 110	\$39.54
LM	110.1 – 170	\$68.38
NP	170.1 – 225	\$96.34
RS	225.1 – 270	\$117.67
T	270.1 and above	\$146.39

(2) For all payment groups, the other operating cost standard payment is \$76.96.

206.05: Capital

(1) Allowable Basis of Fixed Assets and Capital Cost.

(a) Allowable Basis of Fixed Assets.

1. Fixed Assets. Fixed assets include land, building, improvements, equipment, and software.
2. Allowable Basis. The allowable basis is the lower of the provider's actual construction cost or the maximum capital expenditure approved for each category of assets by the Massachusetts Public Health Council and used for nursing facility services. EOHHS classifies depreciable land improvements such as parking lot construction, on-site septic systems, on-site water and sewer lines, walls, and reasonable and necessary landscaping costs as building cost.
3. Allowable Additions. EOHHS will recognize fixed asset additions made by the provider if the additions are related to the care of publicly assisted residents. If additions relate to a capital project for which the Department has established a maximum capital expenditure, the allowable amount will be limited to the amount approved by the Department. EOHHS will not recognize fixed asset additions made or equipment rental expense incurred within 12 months after a determination of need project becomes operational.
4. Change of Ownership.
 - a. If there is a change of ownership, the allowable basis will be determined as follows.
 - i. Land. The allowable basis is the lower of the acquisition cost or the seller's allowable basis.
 - ii. Building. The allowable basis is the lower of the acquisition cost or the seller's allowable basis, reduced by the amount of actual depreciation allowed in the Medicaid rates for the years 1968 through June 30, 1976, and 1993 forward.
 - iii. Improvements. The allowable basis is the lower of the acquisition cost or the seller's allowable basis, reduced by the amount of actual depreciation allowed in the MassHealth rates.
 - iv. Equipment. The allowable basis is the lower of the acquisition cost or the seller's allowable basis, reduced by the amount of actual depreciation allowed in the MassHealth rates.
 - b. Upon transfer, the seller's allowable building improvements will become part of the new owner's allowable basis of building.

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- c. If EOHHS cannot determine the amount of actual depreciation allowed in a prior year from its records, EOHHS will determine the amount using the best available information including, among other things, documentation submitted by the provider.
- d. EOHHS will limit the annual amount of depreciation on transferred assets to the seller's annual allowed depreciation.

5. Special Provisions.

- a. Nonpayment of Acquisition Cost. EOHHS will reduce allowable basis if the provider does not pay all or part of the acquisition cost of a reimbursable fixed asset or if there is a forgiveness, discharge, or other nonpayment of all or part of a loan used to acquire or construct a reimbursable fixed asset. EOHHS will reduce the basis to the extent that the basis was derived from the acquisition or construction cost of the fixed asset.
- b. Repossession by Transferor. EOHHS will recalculate allowable basis if a transferor repossesses a facility to satisfy the transferee's purchase obligations; becomes an owner or receives an interest in the transferee's facility or company; or acquires control of a facility. The allowable basis will not exceed the transferor's original allowable basis under EOHHS regulations applicable at the date of change of ownership, increased by any allowable capital improvements made by the transferee since acquisition, and reduced by depreciation since acquisition.

(b) Capital Costs. EOHHS will calculate the provider's capital costs including depreciation, financing contribution, and other capital costs as defined in 101 CMR 206.05(1)(b)1. through 5.

- 1. Depreciation. EOHHS will allow depreciation on buildings, improvements, and equipment based on the allowable basis of fixed assets as of December 31, 2007. Depreciation of buildings, improvements, and equipment will be allowed based on generally accepted accounting principles using the allowable basis of fixed assets, the straight line method, and the following useful lives.

Assets	Years	Rate
Buildings and Additions	40	2.5%
Improvements (including septic systems and freestanding waste-water treatment systems)	20	5%
Equipment, Furniture, and Fixtures	10	10%
Software	3	33.3%

- 2. Financing Contribution. EOHHS will calculate a financing contribution by multiplying 7.625% by the allowable net book value as of December 31, 2007. The allowable net book value is the allowable basis less all accumulated depreciation calculated for the period through December 31, 2007, except allowed building depreciation expense that occurred between January 1, 1983, and December 31, 1992.

- 3. Rent and Leasehold Expense. EOHHS will allow reasonable rental and leasehold expenses for land, building, and equipment at the lower of: average rental or ownership costs of comparable providers, or the reasonable and necessary costs of the provider and lessor including interest, depreciation, real property taxes, and property insurance. EOHHS will not allow rent and leasehold expense unless a realty company cost report is filed.

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4. Capital Costs. EOHHS will calculate the provider's capital costs by adding allowable 2007 depreciation and other fixed costs and the financing contribution.
5. 2007 Capital Cost Per Day. EOHHS will calculate the provider's 2007 capital cost per day by dividing 2007 capital costs by the greater of 96% or the actual utilization rate times the constructed bed capacity times 365.

(2) Capital Payment.

(a) EOHHS will include capital payments listed in 101 CMR 206.05(2)(b) for the following facilities:

1. new facilities and licensed beds that become operational on or after February 1, 1998, and are:
 - a. new or replacement facilities constructed pursuant to a determination of need approved after March 7, 1996;
 - b. new facilities constructed in urban underbedded areas exempt from the determination of need process;
 - c. new beds licensed pursuant to a determination of need approved after March 7, 1996;
 - d. new beds in 12-bed expansion projects not associated with an approved determination of need project; or
 - e. beds acquired from another facility that are not subject to a determination of need, to the extent that the additional beds increase the facility's licensed bed capacity; and
2. private nursing facilities that sign a provider agreement with EOHHS after October 1, 2008.

(b) The capital payment will be as follows.

Date that New Facilities and Licensed Beds Became Operational	Payment Amount
February 1, 1998 – December 31, 2000	\$17.29
January 1, 2001 – June 30, 2002	\$18.24
July 1, 2002 – December 31, 2002	\$20.25
January 1, 2003 – August 31, 2004	\$20.25
September 1, 2004 – June 30, 2006	\$22.56
July 1, 2006 – July 31, 2007	\$25.82
August 1, 2007 - July 31, 2008	\$27.30
August 1, 2008 – September 30, 2016	\$28.06
October 1, 2016 – Forward	\$37.60

(3) Capital Payment – Other Facilities. For all other facilities, the capital payment is based on the facility's capital costs, including allowable depreciation, financing contribution, and other fixed costs.

(a) If a facility's capital payment effective September 30, 2014, is less than \$17.29, its capital payment will be the greater of its September 30, 2014, capital payment or the payment determined as follows.

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2007 Capital Costs Per Day (101 CMR 206.05(1))	Capital Payment Effective October 1, 2014
\$0.00 to \$4.00	\$4.45
\$4.01 to \$6.00	\$6.18
\$6.01 to \$8.00	\$8.15
\$8.01 to \$10.00	\$10.13
\$10.01 to \$12.00	\$12.11
\$12.01 to \$14.00	\$14.08
\$14.01 to \$16.00	\$16.06
\$16.01 to \$17.29	\$17.29
\$17.30 to \$18.24	\$18.24
\$18.25 to \$20.25	\$20.25
\$20.26 to \$22.56	\$22.56
\$22.57 to \$25.82	\$25.82
>\$25.83	\$27.30

(b) If a facility's capital payment effective September 30, 2014, is greater than or equal to \$17.29, the facility's revised capital payment will equal its September 30, 2014, capital payment.

(c) If a provider relicensed beds that were out of service during the rate period, its capital payment will be the lower of the capital payment rate established under 101 CMR 206.05(3)(a) or the facility's most recent capital payment rates.

(d) If the provider's capital payment is based on a determination of need approved prior to March 7, 1996, and the provider receives a temporary capital payment in accordance with 101 CMR 206.05(4)(b)3., then EOHHS will revise the provider's capital payment in accordance with 101 CMR 206.05(4)(b)4.

(4) Revised Capital Payment for Substantial Capital Expenditure.

(a) General Notification Requirements. All providers must notify the Center when they open, add new beds, renovate, or reopen beds. The notification must contain the provider's name, address, and vendor payment number, date of bed change, type of change, and description of project.

(b) Request for Revised Capital Payment. Eligible providers may request a revised capital payment for capital costs associated with the change or renovation of licensed beds.

1. Facilities that may request a revised capital payment include
 - a. new facilities and newly licensed beds that open pursuant to a determination of need;
 - b. replacement facilities that open on or after October 1, 2016, pursuant to a determination of need;
 - c. facilities with renovations made pursuant to a determination of need;
 - d. facilities with 12 bed additions; and

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- e. facilities that requested and received an approved determination of need pursuant to the delegated review process in 1996 under 105 CMR 100.505: *Applications Eligible for Delegated Review and Action* (A)(4).
 2. If a provider listed in 101 CMR 206.05(4)(b)1. requests a revised capital payment to reflect a change in beds, it must submit the following, as well as any additional information that EOHHS determines necessary to calculate a revised capital payment:
 - a. a description of the project;
 - b. a copy of the construction contract;
 - c. copies of invoices and cancelled checks for construction costs;
 - d. a copy of the Department's licensure notification associated with the new beds;
 - e. a copy of the mortgage; and
 - f. a hard copy and electronic version of the calculation of the requested increase, in a format specified by EOHHS.
 3. EOHHS will process a maximum of three notifications for an approved determination of need maximum capital expenditure. EOHHS will process an initial notification request only if the provider has expended at least 50% of the determination of need maximum capital expenditure. EOHHS will process two additional notification requests equal to at least 25% of the determination of need maximum capital expenditure.
 4. EOHHS will certify a temporary capital payment upon receipt of the notification of the change in beds, rate adjustment request, and required supporting documentation.
 5. If the provider's capital payment is based on a determination of need approved prior to March 7, 1996, in order to calculate the final revised capital payment EOHHS will determine the amount of new allowable assets and apply the financing factor in 101 CMR 206.05(1)(b)2.
- (c) Revised Capital Payment.
1. For new facilities or newly licensed beds specified in 101 CMR 206.05(2)(a), EOHHS will certify a capital payment of \$37.60.
 2. For the following facilities, the final revised capital payment will be the greater of 90% of the amount calculated under 101 CMR 206.05(4)(b)5. or \$37.60:
 - a. new facilities and newly licensed beds that open pursuant to a determination of need approved on or before March 7, 1996;
 - b. replacement facilities that open on or after July 1, 2002, pursuant to a determination of need approved on or before March 7, 1996;
 - c. facilities with 12 bed additions associated with a determination of need approved on or before March 7, 1996; and
 - d. facilities that requested and received an approved determination of need pursuant to the delegated review process in 1996 under 105 CMR 100.505: *Applications Eligible for Delegated Review and Action*(A)(4).
 3. For the following facilities, the revised capital payment will be the lower of the amount calculated under 101 CMR 206.05(4)(b)5. or a payment amount as follows.

Provider's Revised Capital Per Diem	Payment Amount
\$27.31 to \$28.06	\$28.06
\$28.07 to \$30.45	\$30.45
\$30.46 to \$32.84	\$32.84

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\$32.85 to \$35.23	\$35.23
> \$35.24	\$37.60

- a. facilities that renovate pursuant to a determination of need approved after March 7, 1996;
 - b. facilities that implement a transferred determination of need approved before March 7, 1996, but did not file a Notice of Intent to Acquire the facility before March 7, 1996. 101 CMR 206.05(4)(c)2.b. will not apply if the transfer occurred on or after February 1, 1998, and before May 30, 1998. If the transfer occurred during this period, the revised capital payment will be determined under 101 CMR 206.05(3)(c)1.; and
 - c. facilities with a 12-bed addition that simultaneously renovate pursuant to a determination of need approved after March 7, 1996.
4. For facilities with renovations made pursuant to a determination of need approved before March 7, 1996, if the revised amount calculated under 101 CMR 206.05(4)(b)5. is greater than \$37.60, the capital payment will be 90% of the amount calculated under 101 CMR 206.05(4)(b)5. If the calculated amount is lower than \$37.60, the capital payment will be the amount calculated under 101 CMR 206.05(4)(b)5. and limited to the payment amounts in 101 CMR 206.05(3)(a) and (4)(c).
- (d) Effective Date. The effective date of the revised capital payment will be the date upon which the provider submits the notification and all information and documentation required in 101 CMR 206.05(4)(b)2.
- (e) Weighted Capital Payment. If a provider receives a revised capital payment for new beds and also has beds for which payment is determined under 101 CMR 206.05(3)(a), EOHHS will calculate a weighted capital payment. The provider's capital payment will be determined in accordance with the schedule in 101 CMR 206.05(3)(a). The payment rate will be the next highest payment rate from the weighted rate as calculated by EOHHS in 101 CMR 206.05(3)(a) and (4)(c).
- (f) Retroactive Adjustments. EOHHS may retroactively adjust capital payments if it learns there was a material error in the rate calculation or if the provider made a material error in the cost report.

206.06: Other Payment Provisions

(1) Certification of Public Expenditures of a Nursing Facility Owned and Operated by a Municipality.

- (a) Within 60 days after the filing of its Medicare CMS-2540 cost report, a nursing facility, which is owned and operated by a municipality, may submit a request for Certified Public Expenditures (CPE) to EOHHS. This CPE will account for its public expenditures of providing Medicaid services to eligible Medicaid recipients. The submission will be based on the inpatient routine service cost reported on the CMS-2540 Medicare cost report.
- (b) Following review of the nursing facility's submission, EOHHS will, within 60 days of the submission, approve, deny, or revise the amount of the CPE request based upon its evaluation of the reported costs and payments. The final approved amount will be equal to the difference between the Medicaid interim payments and the total allowable Medicaid costs as determined by EOHHS. This final determined amount will be certified by the municipality as eligible for federal match.
- (c) Interim payments are based on the standard payment methodology pursuant to 101 CMR

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(d) EOHHS will determine total allowable Medicaid costs based on the Medicare CMS-2540 Cost Report and will determine a *per diem* rate calculated as follows.

1. Medicaid Allowable Skilled Nursing Facility Costs. Total allowable costs (worksheet B, Part I, Line 30, Col 18), divided by total days (Worksheet S-3, Line 1, Col 7), times Medicaid days (worksheet S-3, Line 1, Col 5).
2. Medicaid Allowable Nursing Facility Costs. Total allowable costs (worksheet B, Part I, Line 31, Col 18), divided by total days (Worksheet S-3, Line 3, Col 7), times Medicaid days (Worksheet S-3, Line 3, Col 5).
3. Total Allowable Medicaid Costs. The sum of the amount determined in 101 CMR 206.06(1)(d)1. and 2.

(e) EOHHS will calculate an interim reconciliation based on the difference between the interim payments and total allowable Medicaid costs from the as-filed CMS-2540 Cost Report. The nursing facility must notify EOHHS immediately if the CMS-2540 is reopened or an audit is completed. Within 60 days after receiving notification of the final Medicare settlement EOHHS will retroactively adjust the final settlement amount.

(2) Department of Developmental Services (DDS) Requirements. Eligible nursing facilities will receive an allowance to establish and maintain clinical and administrative procedures in a manner that complements DDS interdisciplinary service planning activities under the “Active Treatment Policy” for nursing facility residents with mental retardation and developmental disabilities, which was issued by EOHHS in December 2002.

(a) Eligibility. Eligible nursing facilities are identified by DDS as nursing facility providers of care to residents with mental retardation or developmental disabilities as of June 28, 2016.

(b) Calculation of Allowance. For each eligible nursing facility identified by DDS, the number of residents identified by DDS as having developmental disabilities and communicated to EOHHS as of July 28, 2016, times \$3.00, times 365 days, will equal the total allowance amount. To calculate a per day amount to be included in the payment rates, EOHHS will divide the allowance amount calculated above by the number of Massachusetts Medicaid Non-Managed Care days, as the term is used in the Nursing Facility Cost Report, projected for FY2017.

(c) Ineligibility. If DDS notifies EOHHS that a nursing facility has failed to comply with its requirements or failed to cooperate with the planning activities under the active treatment policy, EOHHS may deem the nursing facility to be ineligible for this adjustment and rescind this allowance for a provider.

(3) Kosher Food Services. Nursing facilities with kosher kitchen and food service operations may receive an add-on of up to \$5 per day to reflect the additional costs of these operations.

(a) Eligibility. To be eligible for this add-on, the nursing facility must

1. maintain a fully kosher kitchen and food service operation that is, at least annually, rabbinically approved or certified; and in accordance with all applicable requirements of law related to kosher food and food products, including but not limited to, M.G.L. c. 94, §156;
2. provide to the Center a written certification from a certifying authority, including the complete name, address, and phone number of the certifying authority, that the applicant’s nursing facility maintains a fully kosher kitchen and food service operation in accordance with Jewish religious standards. For purpose of 101 CMR 206.06(3)(a)2., the

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phrase "certifying authority" will mean a recognized kosher certifying organization or rabbi who has received Orthodox rabbinical ordination and is educated in matters of Orthodox Jewish law;

3. provide a written certification from the administrator of the nursing facility that the percentage of the nursing facility's residents requesting kosher foods or products prepared in accordance with Jewish religious dietary requirements is at least 50%; and
4. upon request, provide the Center with documentation of expenses related to the provision of kosher food services, including but not limited to, invoices and payroll records.

(b) Payment Amounts.

1. To determine the add-on amount, EOHHS will determine the statewide median dietary expense per day for all facilities. The add-on equals the difference between the eligible nursing facility's dietary expense per day and the statewide median dietary expense per day, not to exceed \$5 per day. In calculating the per day amount, EOHHS will include allowable expenses for dietary and dietician salaries, payroll taxes and related benefits, food, dietary purchased service expense, dietician purchased service expense, and dietary supplies and expenses. The days used in the denominator of the calculation will be the higher of the nursing facility's actual days or 96% of available bed days.
2. EOHHS will compare the sum of the add-on amounts multiplied by each nursing facility's projected annual rate period Medicaid days to the state appropriation. In the event that the sum exceeds the state appropriation, each nursing facility's add-on will be proportionally adjusted.

(4) Large Medicaid Provider Payment. Subject to available funding, a nursing facility will be eligible for a large Medicaid provider payment as follows.

(a) Eligibility. A nursing facility will be eligible for the payment if

1. the nursing facility had at least 188 licensed beds in 2014;
2. the nursing facility's combined Massachusetts Medicaid Managed and Non-managed Care and Senior Care Options and PACE days, as reported in its 2014 Nursing Facility Cost Report, divided by total patient days, as reported in its 2014 Nursing Facility Cost Report, is equal to or greater than 70%; and
3. the nursing facility received a score of at least 122 on the Department's Nursing Facility Survey Performance Tool as received by EOHHS on July 8, 2016.

(b) Calculation of Supplemental Payment. EOHHS will calculate the amount of the supplemental payment received by each eligible nursing facility as follows.

1. EOHHS will divide the number of Massachusetts Medicaid non-managed care days, as the term is used in the Nursing Facility Cost Report, projected for FY2017 for each eligible nursing facility by the total number of Massachusetts Medicaid non-managed care days projected for FY2017 in all eligible facilities.
2. EOHHS will multiply the resulting percentage by the available funding.
3. EOHHS will divide the amount calculated above by the number of Massachusetts Medicaid non-managed care days projected for FY2017.
4. This amount will be included as an add-on to each provider's rate.

(5) Leaves of Absence. If a purchasing agency pays for leaves of absence, the payment rate for a leave of absence day is \$80.10 per day, unless otherwise determined by the purchasing agency.

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(6) Nursing Cost. Eligible facilities will receive an add-on to reflect the difference between the standard payment amounts and actual base year nursing spending. To be eligible for such payment, the Department must certify to EOHHS that over 75% of the nursing facility's residents have a primary diagnosis of multiple sclerosis.

(7) Pediatric Nursing Facilities. EOHHS will determine payments to facilities licensed to provide pediatric nursing facility services using allowable reported costs for nursing and other operating costs, excluding administration and general costs, from the nursing facility's 2007 Cost Report. EOHHS will include an administration and general payment based on 85% of 2007 median statewide administration and general costs. EOHHS will apply an appropriate cost adjustment factor to nursing, other operating, and administration and general costs.

(8) Publicly Operated Facilities. Subject to available funding, there will be a supplemental payment of \$3.80 to certain publicly operated nursing facilities owned and operated by a town, city, or state government entity or transferred from municipal ownership since 2001, in which the municipality retains the power to appoint at least one member of the board, and is operating on land owned by the municipality.

(9) Receiverships. EOHHS may adjust the rate of a receiver appointed under M.G.L. c. 111, § 72N solely to reflect the reasonable costs, as determined by EOHHS and the MassHealth agency, associated with the court-approved closure of the nursing facility.

(10) Residential Care Beds. The total payment for nursing and other operating costs for residential care beds in a dually licensed nursing facility is \$80.43.

(11) State-operated Nursing Facilities. A nursing facility operated by the Commonwealth will be paid at the nursing facility's reasonable cost of providing covered Medicaid services to eligible Medicaid recipients.

(a) EOHHS will establish an interim *per diem* rate using a base year CMS-2540 cost report inflated to the rate year using the cost adjustment factor calculated pursuant to 101 CMR 206.06(11)(b) and a final rate using the final rate year CMS-2540 cost report.

(b) EOHHS will determine a cost adjustment factor using a composite index using price level data from the CMS Nursing Home without capital forecast, and regional health care consumer price indices, and the Massachusetts-specific consumer price index (CPI), optimistic forecast. EOHHS will use the Massachusetts CPI as proxy for wages and salaries.

(c) EOHHS may retroactively adjust the final settled amount when the Medicare CMS-2540 cost report is reopened or for audit adjustments.

(12) User Fee. Nursing facility payments will include an add-on for the Medicaid portion of the nursing facility user fee assessment under 114.5 CMR 12.00: *Nursing Facility User Fees*, or any successor regulation. The add-on will be based on the nursing facility class or group established pursuant to 114.5 CMR 12.04: *Calculation of User Fee*, or any successor regulation.

(a) Except for the period from October 1, 2016 through June 30, 2017, nursing facility payments will include a User Fee add-on as listed in 101 CMR 206.06(12)(a).

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Nursing Facility Class or Group	<i>Per Diem</i> Add- on Amount
1	\$15.47
2	\$1.55
3	\$1.55
4	\$0.00

(b) For the period from October 1, 2016, through June 30, 2017, nursing facility payments will include a user fee add-on as listed in 101 CMR 206.06(12)(b):

Nursing Facility Class or Group on October 1, 2016	<i>Per Diem</i> Add-on Amount
1	\$17.59
2	\$1.76
3	\$1.76
4	\$0.00

(c) For the period from October 1, 2016, through June 30, 2017, nursing facility payments will include an annualization adjustment as listed in 101 CMR 206.06(12)(c):

Nursing Facility Class on September 30, 2016	<i>Per Diem</i> Annualized Adjustment
1	\$0.71
2	\$0.07
3	\$0.07
4	\$0.00

(d) EOHHS may adjust the add-on amount to reflect a change in the amount of the nursing facility user fee assessment under 114.5 CMR 12.04: *Calculation of User Fee*, or any successor regulation.

(13) Add-on for Direct Care Staff. For the period from October 1, 2016, through June 30, 2017, providers will receive a rate-add on for wages, benefits, and related employee costs of direct care staff of nursing facility. EOHHS will, via administrative bulletin or other written issuance, establish rules governing various aspects of the add-on including, but not limited to, reporting requirements, noncompliance, penalties for noncompliance, and recovery.

(a) Calculation of the Add-on. EOHHS will calculate the add-on as described in 101 CMR 206.06(13)(a).

1. For each provider, determine the total reported 2014 salaries for directors of nursing , registered nurses , licensed practical nurses , and certified nursing assistants employed by a provider (collectively, "calculation salaries")..

a. If the provider's 2014 cost report was not open for a full year, EOHHS will annualize the reported calculation salaries.

b. Calculation salaries allocated to residential care will be removed.

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2. Multiply the provider's total reported 2014 calculation salaries by the provider's Medicaid utilization as reported in the 2014 cost report to determine the provider's Medicaid calculation salaries. For purposes of 101 CMR 206.06(13), Medicaid utilization is the provider's total reported non-managed care Medicaid days divided by the provider's total reported patient days.
3. Sum the Medicaid calculation salaries calculated for each provider to determine total Medicaid calculation salaries for all providers.
4. Divide each provider's Medicaid calculation salaries by the total Medicaid direct care salaries for all providers.
5. Multiply the resulting percentage by \$35.5 million.
6. Divide the amount determined by each provider's projected number of non-managed care Medicaid days in FY2017.
7. Add an annualization adjustment to ensure that the full \$35.5 million is distributed to providers during the effective period of the wage add-on.

(b) Application of Rate Add-on. The amount calculated pursuant to 101 CMR 206.06(13)(a) will be included as an add-on to each provider's rate. For providers that opened after 2014, an amount equal to the median value of the add-on among providers that were open in 2014 will be included as an add-on to each such provider's rate.

(c) Permissible Use. Providers must use the direct care add-on revenue to increase wages, benefits and related employee costs for registered nurses, licensed practical nurses, certified nursing assistants, dietary aides, housekeeping aides, laundry aides, activities staff and social workers employed by the provider. Such expenditures may include overtime payment and bonuses. Spending for temporary nursing services, contract employees, and directors of nursing is not permissible.

(d) Direct Care Add-on Recovery. EOHHS reserves the right to recover any unused or misused revenue associated with this add-on.

206.07: Nursing Facility Pay for Performance Incentive Payments

(1) General. Subject to the MassHealth agency's determination of the availability of funds, nursing facilities may receive incentive payments through the nursing facility Pay for Performance (P4P) Program as designed by the MassHealth agency, subject to the following criteria.

- (2) Payment Eligibility. To be eligible for an incentive payment, a nursing facility must
- (a) be enrolled as a MassHealth nursing facility as of a certain date, to be established by the MassHealth agency on an annual basis;
 - (b) have at least one paid MassHealth day during the measurement year;
 - (c) not be designated by CMS as a Special Focus Nursing Facility;
 - (d) not have an immediate jeopardy designation by the Department; and
 - (e) meet the criteria for clinical measures and any other requirements to be established by the MassHealth agency.

(3) FY2017 Incentive Payments. For state fiscal year 2017, the sum of all P4P incentive payments will be \$2.8 million and will be paid to all nursing facilities that meet the general payment eligibility criteria described in 101 CMR 206.07(2) and attain the performance measures and other requirements established by the MassHealth agency.

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206.08: Reporting Requirements

(1) Required Cost Reports.

(a) Nursing Facility Cost Report. Each provider must complete and file a Nursing Facility Cost Report each calendar year with the Center. The Nursing Facility Cost Report must contain the complete financial condition of the provider, including all applicable management company, central office, and real estate expenses. If a provider has closed on or before November 30th, the provider is not required to file an HCF-1 report.

(b) Realty Company Cost Report. A provider that does not own the real property of the nursing facility and pays rent to an affiliated or non-affiliated realty trust or other business entity must file or cause to be filed a Realty Company Cost Report with the Center.

(c) Management Company Cost Report. A provider must file a separate Management Company Cost Report with the Center for each entity for which it reports management or central office expenses related to the care of Massachusetts publicly aided residents. If the provider identifies such costs, the provider must certify that costs are reasonable and necessary for the care of publicly aided residents in Massachusetts.

(d) Financial Statements. If a provider or its parent organization is required or elects to obtain independent audited financial statements for purposes other than 101 CMR 206.00, the provider must file a complete copy of its audited financial statements with the Center, that most closely correspond to the provider's Nursing Facility Cost Report fiscal period. If the provider or its parent organization does not obtain audited financial statements but is required or elects to obtain reviewed or compiled financial statements for purposes other than 101 CMR 206.00, the provider must file with the Center a complete copy of its financial statements that most closely correspond to the Nursing Facility Cost Report fiscal period. financial statements must accompany the provider's Nursing Facility Cost Report filing. Nothing in 101 CMR 206.08(1)(d) will be construed as an additional requirement that nursing homes complete audited, reviewed, or compiled financial statements solely to comply with the Center's reporting requirements.

(e) Clinical Data. EOHHS may require providers to submit patient level data for the purpose of measuring clinical performance in a format specified by EOHHS. EOHHS may designate required data, data specifications, and other data collection requirements by administrative bulletin.

(f) CMS-2540 Reports. State operated nursing facilities that meet the definition in 42 CFR 433.50(a)(i) must file a CMS-2540 report with the Center annually. The state-operated nursing facility must report the final disposition made by the Medicare intermediary.

(2) General Cost Reporting Requirements.

(a) Accrual Method. Providers must complete all required reports using the accrual method of accounting.

(b) Documentation of Reported Costs. Providers must maintain accurate, detailed, and original financial records to substantiate reported costs for a period of at least five years following the submission of required reports or until the final resolution of any appeal of a rate for the period covered by the report, whichever is later. Providers must maintain complete documentation of all of the financial transactions and census activity of the provider and affiliated entities including, but not limited to, the books, invoices, bank statements, canceled checks, payroll records, governmental filings, and any other records necessary to document the provider's

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reported costs. Providers must be able to document expenses relating to affiliated entities for which it has identified costs related to the care of Massachusetts publicly aided residents whether or not they are related parties.

(c) Fixed Asset Ledger. Providers must maintain a fixed asset ledger that clearly identifies each asset for which expenses are reported, including location, date of purchase, cost, salvage value, accumulated depreciation, and the disposition of sold, lost, or fully depreciated assets.

(d) Job Descriptions and Time Records. Providers and management companies must maintain written job descriptions including qualifications, duties, responsibilities, and time records such as time cards for all positions that the provider identifies as related to the care of Massachusetts publicly aided residents. Facilities organized as sole proprietors or partnerships in which the sole proprietor or partner functions as administrator with no reported administrator salary or benefits must maintain documentation to support the provision of administrator services by the sole proprietor or partner.

(e) Indirect Restorative Therapy Services Record. Providers must maintain a record of indirect restorative therapy services documented by a written summary available for inspection in the nursing facility as required by 105 CMR 150.010(F): *Records and Reports*.

(f) Other Cost Reporting Requirements.

1. Administrative Costs.

a. The following expenses must be reported as administrative:

- i. all compensation, including payroll taxes and benefits, for the positions of administrator, assistant administrator, administrator-in-training, business manager, secretarial and clerical staff, bookkeeping staff, and all staff or consultants whose duties are primarily administrative rather than directly related to the provision of on-site care to residents or to the on-site physical upkeep of the nursing facility;
- ii. expenses related to tasks performed by persons at a management level above that of an on-site provider department head, that are associated with monitoring, supervising, and/or directing services provided to residents in a nursing facility as well as legal, accounting, financial, and managerial services or advice including computer services and payroll processing; and
- iii. expenses related to policy-making, planning, and decision-making activities necessary for the general and long-term management of the affairs of a nursing facility, including but not limited to the following: the financial management of the provider, including the cost of financial accounting and management advisory consultants, the establishment of personnel policies, the planning of resident admission policies, and the planning of the expansion and financing of the provider.

b. Providers must report the cost of administrative personnel to the appropriate account. The cost of administrative personnel includes all expenses, fees, payroll taxes, fringe benefits, salaries, or other compensation.

c. Providers may allocate administrative costs among two or more accounts. The provider must maintain specific and detailed time records to support the allocation.

2. Draw Accounts. Providers may not report or claim proprietorship or partnership drawings as salary expense.

3. Expenses that Generate Income. Providers must identify the expense accounts that generate income.

4. Fixed Costs.

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- a. Additions. If the square footage of the building is enlarged, providers must report all additions and renovations as building additions.
- b. Allocation. Providers must allocate all fixed costs, except equipment, on the basis of square footage. A provider may elect to specifically identify equipment related to the nursing facility. The provider must document each piece of equipment in the fixed asset ledger. If a provider elects not to identify equipment, it must allocate equipment on the basis of square footage.
- c. Replacement of Beds. If a provider undertakes construction to replace beds, it must write off the fixed assets that are no longer used to provide care to publicly aided residents and may not identify associated expenses as related to the care of Massachusetts publicly aided residents.
- d. Fully Depreciated Assets. Providers must separately identify fully depreciated assets. Providers must report the costs of fully depreciated assets and related accumulated depreciation on all cost reports unless they have removed such costs and accumulated depreciation from the provider's books and records. Providers must attach a schedule of the cost of the retired equipment, accumulated depreciation, and the accounting entries on the books and records of the provider to the cost report when equipment is retired.
- e. Major Repair Projects. Providers must report all expenditures for major repair projects whose useful life is greater than one year, including, but not limited to, wallpapering and painting as Improvements. Providers may not report such expenditures as prepaid expenses.
5. Laundry Expense. Providers must separately identify the expense associated with laundry services for which non-publicly aided residents are billed. Providers must identify such expense as non-related to Medicaid patient care.
6. Mortgage Acquisition Costs. Providers must classify mortgage acquisition costs as other assets. Providers may not add mortgage acquisition costs to fixed asset accounts.
7. Nursing Costs. The costs must be associated with direct resident care personnel and be required to meet federal and state laws.
8. Related Parties. Providers must disclose salary expense paid to a related party and must identify all goods and services purchased from a related party. If a provider purchases goods and services from a related party, it must disclose the related party's cost of the goods and services.
- (g) Special Cost Reporting Requirements.
 1. Facilities in Which Other Programs Are Operated. If a provider operates an adult day health program, an assisted living program, or provides outpatient services, the provider may not identify expenses of such programs as related to the care of Massachusetts publicly aided residents.
 - a. If the provider converts a portion of the provider to another program, the provider must identify the existing equipment no longer used in nursing facility operations and remove such equipment from the nursing facility records.
 - b. The provider must identify the total square footage of the existing building, the square footage associated with the program, and the equipment associated with the program.
 - c. The provider must allocate all shared costs, including shared capital costs, using a well-documented and generally accepted allocation method. The provider must directly assign to the program any additional capital expenditures associated with the program.

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2. Hospital-based Nursing Facilities. A hospital-based nursing facility must file cost reports on a fiscal year basis consistent with the fiscal year used in the DHCFP-403 Hospital Cost Report.

- a. The provider must identify the existing building and improvement costs associated with the nursing facility. The provider must allocate such costs on a square footage basis.
- b. The provider must report major moveable equipment and fixed equipment in a manner consistent with the Hospital Cost Report. In addition, the provider must classify fixed equipment as either building improvements or equipment in accordance with the definitions contained in 101 CMR 206.02. The provider may elect to report major moveable and fixed equipment by one of two methods.
 - i. A provider may elect to specifically identify the major moveable and fixed equipment directly related to the care of publicly aided residents in the nursing facility. The provider must maintain complete documentation in a fixed asset ledger that clearly identifies each piece of equipment and its cost, date of purchase, and accumulated depreciation. The provider must submit this documentation to the Center with its first Notification of Change in Beds.
 - ii. If the provider elects not to identify specifically each item of major moveable and fixed equipment, EOHHS will allocate fixed equipment on a square footage basis.
- c. The provider must report additional capital expenditures directly related to the establishment of the nursing facility within the hospital as additions. EOHHS will allocate capital expenditures that relate to the total plant on a square footage basis.
- d. The provider must use direct costing whenever possible to obtain operating expenses associated with the nursing facility. The provider must allocate all costs shared by the hospital and the nursing facility using the statistics specified in the Hospital Cost Report instructions. The provider must disclose all analysis, allocations, and statistics used in preparing the Nursing Facility Cost Report.

(3) General Cost Principles. In order to report a cost as related to Medicaid patient care, a cost must satisfy the following criteria.

- (a) The cost must be ordinary, necessary, and directly related to the care of publicly aided residents.
- (b) The cost must adhere to the prudent buyer concept.
- (c) Expenses otherwise allowable will not be included for purposes of determining rates under 101 CMR 206.00 where such expenses are paid to a related party unless the provider identifies any such related party and expenses attributable to it in the reports submitted under 101 CMR 206.00 and demonstrates that such expenses do not exceed the lower of the cost to the related party or the price of comparable services, facilities, or supplies that could be purchased elsewhere. The Center may request either the provider or the related party, or both, to submit information, books, and records relating to such expenses for the purpose of determining whether the expenses are allowable.
- (d) Only the provider's contribution of generally available employee benefits will be deemed an allowable cost. Providers may vary generally available employee benefits by groups of employees at the option of the employer. To qualify as a generally available employee benefit, the provider must establish and maintain evidence of its nondiscriminatory nature. Generally available employee benefits include but are not limited to group health and life insurance,

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pension plans, seasonal bonuses, child care, and job related education and staff training. Bonuses related to profit, private occupancy, or directly or indirectly to rates of reimbursement will not be included for calculation of prospective rates. Benefits that are related to salaries will be limited to allowable salaries. Benefits, including pensions, related to non-administrative and non-nursing personnel will be part of the other operating cost center. Benefits that are related to the director of nurses, including pensions and education, will be part of the Nursing Cost Center. Providers may accrue expenses for employee benefits such as vacation, sick time, and holidays that employees have earned but have not yet taken, provided that these benefits are both stated in the written policy and are the actual practice of the provider and that such benefits are guaranteed to the employee even upon death or termination of employment. Such expenses may be recorded and claimed for reimbursement purposes only as of the date that a legal liability has been established.

- (e) The cost must be for goods or services actually provided in the nursing facility.
- (f) The cost must be reasonable.
- (g) The cost must actually be paid by the provider. Costs not considered related to the care of Massachusetts publicly aided residents include, but are not limited to: costs discharged in bankruptcy; costs forgiven; costs converted to a promissory note; and accruals of self-insured costs based on actuarial estimates.
- (h) A provider must report the following costs as non-allowable costs:
 - 1. bad debts, refunds, charity, and courtesy allowances and contractual adjustments to the Commonwealth and other third parties;
 - 2. federal and state income taxes, except the non-income related portion of the Massachusetts corporate excise tax;
 - 3. expenses not directly related to the provision of resident care including, but not limited to, expenses related to other business activities and fund raising, gift shop expenses, research expenses, rental expense for space not required by the Department and expenditure of funds received under federal grants for compensation paid for training personnel and expenses related to grants of contracts for special projects;
 - 4. compensation and fringe benefits of residents on a provider's payroll;
 - 5. penalties and interest, incurred because of late payment of loans or other indebtedness, late filing of federal and state tax returns, or from late payment of municipal taxes;
 - 6. any increase in compensation or fringe benefits granted as an unfair labor practice after a final adjudication by the court of last resort;
 - 7. expenses for purchased service nursing services purchased from temporary nursing agencies not registered with the Department under 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies* or paid for at rates greater than the rates established by EOHHS pursuant to 101 CMR 345.00: *Temporary Nursing Services*;
 - 8. any expense or amortization of a capitalized cost that relates to costs or expenses incurred prior to the opening of the nursing facility;
 - 9. all legal expenses, including those accounting expenses and filing fees associated with any appeal process;
 - 10. prescribed legend drugs for individual patients;
 - 11. recovery of expense items, that is, expenses that are reduced or eliminated by applicable income, including but not limited to, rental of quarters to employees and others, income from meals sold to persons other than residents, telephone income, vending machine income, and medical records income. Vending machine income will be recovered against other operating costs. Other recoverable income will be recovered against an

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account in the appropriate cost group category, such as administrative and general costs, other operating costs, nursing costs, and capital costs. The cost associated with laundry income that is generated from special services rendered to private patients will be identified and eliminated from claims for reimbursement. Special services are those services not rendered to all patients (*e.g.*, dry cleaning, *etc.*). If the cost of special services cannot be determined, laundry income will be recovered against laundry expense;

12. costs of ancillary services required by a purchasing agency to be billed on a direct basis, such as prescribed drugs and direct therapy costs; and

13. accrued expenses that remain unpaid more than 120 days after the close of the reporting year, excluding vacation and sick time accruals, will not be included in the prospective rates. When the Center receives satisfactory evidence of payment, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable prospective rates.

(4) Filing Deadlines.

(a) General. Except as provided in 101 CMR 206.08(4)(a)1. and 2., providers must file required cost reports for the calendar year by 5:00 P.M. of April 1st of the following calendar year. If April 1st falls on a weekend or holiday, the reports are due by 5:00 P.M. of the following business day.

1. Hospital-based Nursing Facilities. Hospital-based nursing facilities must file cost reports no later than 90 days after the close of the hospital's fiscal year.

2. Appointment of a Resident Protector Receiver. If a receiver is appointed pursuant to M.G.L. c. 111, § 72N, the provider must file cost reports for the current reporting period or portion thereof, within 60 days of the receiver's appointment.

(b) Extension of Filing Date. The Center may grant a request for an extension of the filing due date for a maximum of 30 calendar days. In order to receive an extension, the provider must

1. submit the request itself, and not by agent or other representative;
2. demonstrate exceptional circumstances that prevent the provider from meeting the deadline; and
3. file the request with the Center no later than 30 calendar days before the due date.

(c) Administrative Bulletin. The Center may modify the filing deadlines by issuing an administrative bulletin 30 days prior to any proposed change.

(5) Incomplete Submissions. If the cost reports are incomplete, the Center will notify the provider in writing within 120 days of receipt. The Center will specify the additional information that the provider must submit to complete the cost reports. The provider must file the required information within 25 days of the date of notification or by April 1st of the year the cost reports are filed, whichever is later. If the Center fails to notify the provider within the 120-day period, the cost reports will be considered complete and will be deemed to be filed on the date of receipt.

(6) Audits. The Center and the MassHealth agency may conduct desk audits or field audits to ensure accuracy and consistency in reporting. Providers must submit additional data and documentation relating to the cost report, the operations of the provider and any related party as requested during a desk or field audit even if the Center has accepted the provider's cost reports.

(7) Penalties. If a provider does not file the required cost reports by the due date, EOHHS may reduce the provider's rates for current services by 5% on the day following the date the submission

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is due and 5% for each month of noncompliance thereafter. The reduction accrues cumulatively such that the rate reduction equals 5% for the first month late, 10% for the second month late, and so on. The rate will be restored effective on the first of the month following the date the cost report is filed.

206.09: Special Provisions

- (1) Rate Filings. EOHHS will file certified rates of payment for nursing facilities with the Secretary of the Commonwealth.
- (2) Appeals. A provider may file an appeal at the Division of Administrative Law Appeals of any rate established pursuant to 101 CMR 206.00 within 30 calendar days after EOHHS files the rate with the State Secretary. EOHHS may amend a rate or request additional information from the provider even if the provider has filed a pending appeal.
- (3) Administrative Bulletins. EOHHS and the Center may issue administrative bulletins to clarify provisions of 101 CMR 206.00 or to specify data collection requirements. Such bulletins will be deemed to be incorporated in the provisions of 101 CMR 206.00. EOHHS and the Center will file the bulletins with the Secretary of the Commonwealth, distribute copies to providers, and make the bulletins accessible to the public at EOHHS's and the Center's offices during regular business hours.
- (4) Severability. The provisions of 101 CMR 206.00 are severable. If any provision of 101 CMR 206.00 or the application of any provision of 101 CMR 206.00 is held invalid or unconstitutional, such provision will not be construed to affect the validity or constitutionality of any other provision of 101 CMR 206.00 or the application of any other provision.

REGULATORY AUTHORITY

101 CMR 206.00: M.G.L. c. 118E.